

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between the City of Albuquerque, New Mexico, a municipal corporation (hereinafter referred to as the "City"), and SkyBridge Global, 161 Village Parkway, Building #7, Marietta, Georgia 30067 (hereinafter referred to as the "Contractor").

RECITALS

WHEREAS, the City desires to implement Enterprise Resource Planning software, hereafter referred to as ERP, specifically the PeopleSoft ERP suite; and

WHEREAS, the Contractor is qualified and experienced to provide analysis and design services for implementation of the PeopleSoft ERP suite and is available to provide such services pursuant to GSA contract # GS-35F-0763R, valid until July 27, 2010; and

WHEREAS, the City desires to engage the Contractor to render certain services in connection therewith and the Contractor is willing to provide such services.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. **Scope of Services.** The Contractor shall perform the following services (hereinafter referred to as the 'Services') in a satisfactory and proper manner, as determined by the City:

Provide analysis and design services described in the Statement of Work, attached hereto as Exhibit A and by this reference made a part hereof. In the event of a conflict between this Agreement and Exhibit A, this Agreement shall prevail.

2. **Time of Performance.** Services of the Contractor shall commence October 1, 2006, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed by or before February 28, 2007.

3. **Compensation and Method of Payment.**

A. **Compensation.** For performing the Services specified in Section 1 hereof, the City agrees to pay the Contractor up to the amount of **Nine Hundred Eighty-nine Thousand and Five Hundred Sixty-four dollars (\$989,564.00)**, which includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing the Services.

B. Method of Payment. Such amount includes **Eight Hundred Twenty-nine Thousand Five Hundred Sixty-four dollars (\$829,564.00)** for Services. The City will reimburse the Contractor up to the amount of **One Hundred Sixty Thousand (\$160,000.00)** for necessary and reasonable travel and related travel expenses at actual cost for reasonably-priced meals, airfare and accommodations incurred by Contractor's representative(s) in the performance of the Services hereunder when such services are performed at the City's site, and only at the request of the City. Air or other public conveyance costs shall be reimbursed at cost upon receipt of proper documentation submitted with Contractor's invoice for coach or tourist class travel expenses. Meals and lodging shall be reimbursed at cost at reasonable and customary rates for "Holiday Inn"-type accommodations. The Contractor shall separately indentify travel and related travel expenses on its invoices payable upon completion of the Services upon receipt by the City of properly documented requisitions for payment as determined by the budgetary and fiscal guidelines of the City and on the condition that the Contractor has accomplished the Services to the satisfaction of the City.

C. Appropriations. Notwithstanding any provision in this Agreement to the contrary, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement may be terminated at the end of the City's then current Fiscal Year upon written notice given by the City to the Contractor. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

4. Independent Contractor. Neither the Contractor nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the Services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

5. Personnel.

A. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of or have any contractual relationships with the City.

B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

C. None of the work or the Services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or Services subcontracted hereunder shall be specified by written contract or Agreement and shall be subject

to each provision of this Agreement.

6. **Indemnity.** The Contractor agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from the Services performed by the Contractor under this Agreement or by reason of any asserted act or omission, neglect or misconduct of the Contractor or Contractor's agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

7. **Insurance.** The Contractor shall procure and maintain at its expense until final payment by the City for Services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the Services and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days' written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

A. **Commercial General Liability Insurance.** N/A

B. **Automobile Liability Insurance.** N/A.

C. **Workers' Compensation Insurance.** Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensations Act of the State of New Mexico.

D. **Increased Limits.** If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

8. **Discrimination Prohibited.** In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended.

9. **ADA Compliance.** In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (the 'ADA'), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.

10. **Reports and Information.** At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement. Unless otherwise authorized by the City, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the City.

11. **Open Meetings Requirements.** Any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to the requirements of § 2-5-1 et seq., R.O.A. 1994, Public Interest Organizations. The Contractor agrees to comply with all such requirements, if applicable.

12. **Establishment and Maintenance of Records.** Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

13. **Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

14. **Publication, Reproduction and Use of Material.** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

15. **Compliance With Laws.** In performing the Services required hereunder, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, state and local governments.

16. **Changes.** The City may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in written amendments to this Agreement.

17. **Assignability.** The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City thereto.

18. **Termination for Cause.** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by the Contractor under this Agreement shall, at the option of the City, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

19. **Termination for Convenience of City.** The City may terminate this Agreement at any time by giving at least fifteen (15) days' notice in writing to the Contractor. If the Contractor is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Services actually performed bear to the total Services of the Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.

20. **Construction and Severability.** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

21. **Enforcement.** The Contractor agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

22. **Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

23. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.

24. **Approval Required.** This Agreement shall not become effective or binding until approved by the City's Purchasing Officer.

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IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the date first above written.

CITY OF ALBUQUERQUE

Approved By:

Bruce J. Perlman, Ph.D.
Chief Administrative Officer

Date: _____

Tanda Meadors, Director
Department of Finance and
Administrative Services

Date: _____

CONTRACTOR: SkyBridge Global,
Inc.

By: _____

Title: _____

State Taxation and Revenue Department
Taxpayer Identification Number:

Federal Taxpayer Identification Number:
58-2431567